

Appln. No.: 09/474,492
Amdt. Dated: February 12, 2004
Reply to Office Action dated: January 14, 2004

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application:

Appl. No. : 09/474,492
Applicant : Thomas J. Foth et al.
Filed : December 29, 1999
Art Unit : 3624
Examiner : Steven R. Wasylchak
Attorney Docket No. : E-974
Customer No. : 00919

Confirmation No.: 2311

Date: February 12, 2004

OFFICIAL**RESPONSE TO OFFICE COMMUNICATION**

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This communication is in response to the Office Action mailed January 14, 2004.

In the Office Action mailed January 14, 2003, the Examiner stated that the Amendment and Reply filed on November 3, 2003, was not fully responsive to the Office Action of August 01, 2003. The Examiner stated that the Applicants did not respond to the Examiner's position that elements of the claims were rendered obvious in view of standard accounting procedures that require that accounting of refunds be maintained. However, it is the Applicants' position that the filed reply was fully responsive. While the Applicants did state on page 9 of the reply that the Examiner's Official notice that "taking funds from one account and transferring them to another is a standard bookkeeping practice" is not germane, the Applicants went on to explain in detail why the Official notice provision was not relevant. The Applicants explained that in the instant invention a refund account tracks refund activity of a particular buyer. As described in the specification, the refund account can, for example, track the total value

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of refunds that have been given for a buyer or the total number of times a refund has been given for a particular buyer. In either case, when a predetermined threshold of the total value or the total number of refunds has been exceeded, either the vault can be rendered inactive or the ability to obtain a refund can be prevented (see for example claims 1, 12, 13, 2, 14, 7, and 17). Thus, it was the Applicants' position that standard accounting procedures do not teach or suggest the claimed refund account which is directed to specifically tracking the refund activity of a particular buyer. While refunds are accounted for as part of standard accounting practices, the Applicants are not aware of a mechanism for tracking the total level of refund activity which can be used to suspend further refund activity if a certain threshold is exceeded. → A/R

In order to move the prosecution along, the Applicants submit that the original reply was responsive. However, even if the Examiner disagrees, the Applicants submit that this further explanation in conjunction with the previous reply (which is incorporated herein by reference) is clearly responsive even if the Examiner ultimately finds it not to be persuasive. It is Applicants' position that the claimed refund account is neither taught nor suggested by the general accounting procedures discussed by the Examiner.

If it is the Examiner's position that he takes Official Notice that a refund account which tracks the refund activity of a buyer (i.e. total of refund value given or total number of refunds given) is a general accounting practice, the Applicants challenge the appropriateness of such Official Notice in accordance with MPEP 2144.03 and request that the Examiner provide documentary evidence to support his position or submit an affidavit or declaration supporting his position if it is based on his personal knowledge. (See MPEP 2144.03 paragraph C).

It is further submitted that the specifically claimed refund activity account is a key component of the invention for which the Examiner is relying solely upon alleged common knowledge as the principal evidence upon which the rejection is based. As

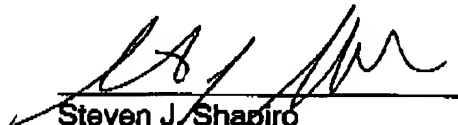
Appln. No.: 09/474,492
Amdt. Dated: February 12, 2004
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discussed in *Zurko*, 258 F.3d at 1386, 59 USPQ 2d at 1697, such reliance on common knowledge is never appropriate.

Finally, the Applicants have previously expressed their concern over the unnecessary extended prosecution that has occurred in this Application. While the Applicants appreciate the Examiner's comments that the patent Office is now under a quality initiative as well as an expeditious prosecution initiative, these initiatives are not mutually exclusive. In view of the extended prosecution already encountered in this Application through no fault of the Applicants, it is respectfully requested that all further prosecution be handled in a highly expeditious manner.

In view of the above and the last filed response, it is submitted that the application stands in condition for allowance. Reconsideration of the rejections is respectfully requested and an early notice of allowance earnestly solicited.

Respectfully submitted,



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Appln. No.: 09/474,492
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Patent and Trademark Office
Attention: Examiner Steven R. Wasylchak, Group Art Unit: 3624
Facsimile No. (703) 872-9306

February 12, 2004
Date of Transmission


Signature

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February 12, 2004
Date